

APR 08 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICKEY LEE WAGGONER,

Defendant - Appellant.

No. 08-30043

D.C. No. CR-06-60046-HO

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Oregon  
Michael R. Hogan, District Judge, Presiding

Submitted March 18, 2009<sup>\*\*</sup>

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges

Mickey Lee Waggoner appeals the fifteen-year sentence imposed following his guilty plea to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He contends that the district court erred in treating his two prior

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

convictions for first degree burglary under Or. Rev. Stat. § 164.225 as violent felonies under the Armed Career Criminal Act. This contention is foreclosed by *United States v. Mayer*, No. 07-30274, slip op. 3295, 3320-21 (9th Cir. Mar. 16, 2009) (holding that first degree burglary under § 164.225 is categorically a “violent felony” under the Act’s residual clause).

**AFFIRMED.**